

IN THE COURT OF CRIMINAL APPEALS

Ex parte Andrew Pete,
Appellant

The State of Texas,
Appellee

PD-0771-16 FILED
PD-0772-16 COURT OF CRIMINAL APPEALS
12/5/2016
PD-0773-16 ABEL ACOSTA, CLERK

Court of Appeals Nos.:
05-15-01521-CR, 05-15-01522-CR, and
05-15-01523-CR

**State's Response to Appellant's
Motion to Dismiss Petitions for Discretionary Review**

A jury found Appellant guilty of three counts of aggravated sexual assault of a child under the age of 14.¹ Some time after those verdicts were accepted, Hon. Susan Hawk ("Judge Hawk") resigned as Dallas County Criminal District Attorney to care for her health.² Appellant now points to Judge Hawk's circumstances, and he urges this Court to dismiss the State's petitions for discretionary review so he can escape the guilty verdicts.³

This Court should reject his invitation.

I.

Appellant has laid out the procedural history of these petitions for discretionary review on a timeline. He questions how much supervision Judge Hawk exercised over her assistants in these cases, whether she approved personally of how they handled his

¹ 1 C.R. at 15, 91; 2 C.R. at 14, 79; 3 C.R. at 14, 91.

² See Appendix.

³ See "Appellant's Motion to Dismiss Petition for Discretionary Review."

cases, and whether she herself put pen to paper to sign various documents.⁴ All of these issues are beside the point. No matter how the timing unfolded, Judge Hawk remains in office as a holdover officer until her successor is qualified.⁵

II.

Appellant's argument is undermined by nothing less than the Texas Constitution. When a vacancy occurs in a public office, the Texas Constitution provides for continuity in government: "All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified."⁶

Criminal District Attorneys are no different. In *Bolding v. State*, for example, this Court applied this provision when a criminal district attorney resigned in the middle of his trial that was being prosecuted by his assistants.⁷ The *Bolding* Court explained that "[t]he purpose of the constitutional provision is to insure, insofar as possible, that there be no cessation in government. It continues the officer in the office with all the powers incident thereto until his successor has been duly qualified."⁸ For that reason, despite the criminal district attorney's resignation, he continued in office as a holdover officer, and his assistants were still able to prosecute the case.⁹

⁴ See generally "Appellant's Motion to Dismiss Petition for Discretionary Review."

⁵ See *Bolding v. State*, 493 S.W.2d 181, 183–84 (Tex. Crim. App. 1973) (citing Tex. Const. art. XVI, § 17).

⁶ Tex. Const. art. XVI, § 17.

⁷ *Bolding*, 493 S.W.2d at 183–84.

⁸ *Id.*

⁹ *Id.*

The same must be said of Judge Hawk and her assistants. The Texas Constitution recognizes that citizens should not be denied vital public services due to the death or resignation of single individuals. Despite Appellant's pleas, Texas's government is not so delicate as that.

III.

The Legislature also undercuts Appellant's argument. True, it has given broad authority to the Criminal District Attorney of Dallas County, who "has exclusive control of criminal cases and all cases heard on habeas corpus in the courts of Dallas County" ¹⁰ But the Legislature does not require her to carry that responsibility alone. It has provided that "[a]n assistant prosecuting attorney may perform all duties imposed by law on the prosecuting attorney." ¹¹

And should the office of Criminal District Attorney become vacant, the Legislature has not left those assistants to wander, impotently and without aim. If a vacancy occurs, the Legislature has declared that leadership falls to the First Assistant: "The first assistant or chief deputy of a public office in which a physical vacancy occurs shall conduct the affairs of the office until a successor qualifies for the

¹⁰ Tex. Gov't Code § 44.157(a) (West 2016).

¹¹ *Id.* at § 41.103 (West 2016).

office.”¹² As would be expected, when a successor does eventually qualify for the office, the First Assistant’s authority ceases.¹³

Appellant does not cite these provisions, instead relying on article 44.01 of the Code of Criminal Procedure. His point misses the mark, however. Article 44.01 allows the State to invoke a Court of Appeals’ jurisdiction to raise certain issues on direct appeal.¹⁴ But the State did not invoke the Court of Appeals’ jurisdiction below—Appellant did. In addition, these cases are now past the direct-appeal stage. This Court has granted the State’s petitions and has accepted briefing on the merits from both parties. As article 44.01 provides, when the State brings a petition for discretionary review to this Court, the petition is controlled by the Texas Rules of Appellate Procedure—not the Code of Criminal Procedure.¹⁵ Appellant’s reliance on article 44.01 is mistaken.

The provisions providing what happens when there is a vacancy in a public office are specific and on point, and they control here. During Judge Hawk’s absence, the Dallas County Criminal District Attorney’s Office has functioned just as the Legislature planned. First Assistant Messina Madson has assumed leadership, and all assistants have continued to seek justice for the citizens of Dallas County.

¹² *Id.* at § 601.002(a) (West 2016).

¹³ *Id.* at § 601.002(b) (West 2016).

¹⁴ *See generally* Tex. Code Crim. Proc. art. 44.01 (West 2016).

¹⁵ *See* Tex. Code Crim. Proc. art. 44.01(h) (West 2016).

IV.

The Texas Constitution and the Legislature explain what happens when a public office becomes vacant.¹⁶ This Court has interpreted the process seamlessly.¹⁷ When a person resigns the office of Criminal District Attorney, she nevertheless continues as a holdover officer until her successor is qualified.¹⁸ In the meantime, her First Assistant leads the office in her place, and her assistants continue their work.¹⁹

Texas law favors continuity of government when a public office becomes vacant.²⁰ And yet, based on Judge Hawk's resignation and illness, Appellant asks this Court to set aside these petitions. Many other defendants would surely appreciate similar treatment in their own cases. But in addition to flying in the face of the Texas law, Appellant's argument would bring criminal justice in Dallas County to an abrupt halt. That might serve his own interests, but it would not serve the 2.5 million other people who need the law to be enforced in their community.

¹⁶ See Tex. Const. art. XVI, § 17; Tex. Gov't Code §§ 41.103, 601.002(a) (West 2016).

¹⁷ See *Bolding*, 493 S.W.2d at 183–84. See also *LaSalle v. State*, 923 S.W.2d 819, 827 (Tex. App.—Amarillo 1996, pet. ref'd).


¹⁸ See *Bolding*, 493 S.W.2d at 183–84.

¹⁹ See *id.*

²⁰ See *id.*

There is no reason why this Court should not address these petitions on the merits. This Court should deny Appellant's motion.

Respectfully submitted,




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Certificate of Service

I certify that true copy of this document was served on Scottie D. Allen as appellate counsel for Andrew Pete and Lisa C. McMinn as State Prosecuting Attorney. Service was made by email to scottie_d_allen@scottiedallenlaw.com and to information@spa.texas.gov on December 2, 2016.



Brian P. Higginbotham

Appendix



SUSAN HAWK
CRIMINAL DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

September 6, 2016

Governor Greg Abbott
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

Dear Governor Abbott,

It is with a heavy heart that I must tender my resignation as Dallas County District Attorney. It's been an honor and a privilege to serve this office and the citizens of Dallas County, but my health needs my undivided attention.

More than my words could express, I appreciate the grace I've been shown as I've tried to balance my health and my duties. This has been a very difficult process for me as I've dedicated my life to serving our criminal justice system. I believe our office is making a difference and I want to continue that good work. But last fall upon returning from treatment, I made a commitment to step away from the office if I felt I could no longer do my job, and unfortunately I've reached that point as my health needs my full attention in the coming months.

While my personal health issues have received much attention over the past months, it's my hope that those issues do not overshadow the great work of our office over the past 20 months, so I would like to give you some of our highlights:

- Improved **overall efficiency**, allowing the DA's office to reduce the cost of disposition per case, getting taxpayers more for their money
- Increased **trust and transparency** by putting an external audit process in place for forfeiture fund expenditures, and then regularly posting these expenses for public review
- Secured more than **\$2 million in grant funding** to support additional resources and services in the Sexual Assault and Family Violence units, funding critical to testing rape kits that have been backlogged for years
- Conducted **6 town hall meetings**, including the DA's office first bilingual town hall addressing safety issues in Hispanic communities
- Creation of the **Community Response Team** which targets offenders who pose the biggest threat to our community and have high rates of recidivism, and providing specialized prosecution strategies and greater collaboration with the trial courts to close the revolving door

- Expansion of the **Conviction Integrity Unit**, and recruiting nationally-renowned leadership for that unit. This action already has led to relief for Steven Mark Chaney, who spent more than 28 years in prison based primarily on bite-mark evidence that has now been discredited. Recently, Mr. Chaney was fully exonerated for the crime he did not commit
- Creation of the **DA in Schools** program, targeting at-risk communities, and working to build a positive relationship between targeted communities and law enforcement
- Creation of the **nation's most comprehensive DA-driven diversion unit**, the Reformatory Justice Unit, which steers young adult and mentally ill offenders away from incarceration and directing them to life changing resources and services

I spent the first six months of my tenure assembling what I believe is a leadership team for our DA's office that is among the best in the nation. The office is running better than ever, and it's my hope that this team can stay together and move forward seamlessly with a new leader.

On a personal note, I want to say that I've loved serving the citizens of Dallas County for the past 22 years as an intern at the DA's office, as a prosecutor, as a judge and as District Attorney. The courthouse has been my home. My purpose has been to help people, and I've loved every minute of it.

Respectfully,

A handwritten signature in black ink, reading "Susan Hawk". The signature is fluid and cursive, with the first name "Susan" and the last name "Hawk" clearly distinguishable.

Hon. Susan Hawk

cc: Dallas County Judge Clay Jenkins